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In the
Supreme Court of the United States
OCTOBER TERM, A. D. [redacted] 1949

EDNA PEARL BAILEY,
Petitioner and Appellee Below,

v.

B. F. BASS,
Respondent and Appellant Below.

BRIEF OF RESPONDENT IN REPLY TO PETITION FOR WRIT OF CERTIORARI

ROLAND BOYD,
McKinney, Texas,
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To the Honorable Fred M. Vinson, Chief Justice of the Supreme Court of the United States and the Associate Justices of the Supreme Court of the United States:

Respondent respectfully submits the following:

I.

The statement of the case made by petitioner (P-1 of Petition) is substantially correct, with the exception that his motion for judgment in the trial court expressly admitted, for the purpose of the motion, that all the allegations set out in the answer were true.

II.

The decision of the Circuit Court is not based upon any one procedural error, but is grounded upon the fundamental proposition that the original Kansas judgment is void because it was beyond the power and jurisdiction of the Court, being entered as a default, when no default existed, as shown by the admitted facts, and the recitation in the Kansas judgment showing that it was entered only because respondent's counsel had withdrawn from the case.

III.

The admitted facts show that respondent had appeared in the Kansas Court, duly filed his answer, and thereafter petitioner secured the entry of a judgment in a personal injury suit for unliquidated damages. No notice was given respondent of the application for judgment, no jury trial was had, although demand had been made for a jury, no evidence was introduced, no notice was given after judgment, respondent had no actual knowledge of the entry of the judgment, and had a good defense to the suit which he was given no opportunity to present, and he had no knowledge of the withdrawal of his counsel. The Circuit Court held that "this does not look like due process of law under the Constitution nor even like a judicial trial."

IV.

The Circuit Court did not err in holding the judgment void and therefor subject to collateral attack, because the Kansas proceeding was so devoid of judicial due process as to render the judgment beyond the judicial power of

the Court to enter, and was unconstitutional invasion of the property rights of respondent.

Authorities and Argument

Rule 35-B, Federal Rules of Civil Procedure, says, "if the party against whom judgment by default is sought has appeared in the action, he shall be served with written notice of the application for judgment at least three days prior to the hearing on such application. If, in order to enable the Court to enter judgment or to carry it into effect it is necessary to take an account, or to determine the amount of damages, or to establish the truth of any averment by evidence, or to make an investigation of any other matter, the Court may conduct such hearings or order such references as it deems necessary and proper, and shall accord a right of trial by jury to the parties when and as required by any statute of the United States." All of the above provisions were ignored by the Kansas Court.

Authorities

"No Court has the Judicial Power to render a default judgment against a Defendant when he has an Answer on file." *Sanier v. Turner (Tex.), 33 S. W. p. 294.*

"A simple judgment by default cannot legally be taken where an Answer of Defendant is on file, the general denial of the Appellants being on file it was incumbent on the Appellees to prove liability as well as the amount of damages." *Pecos Ply Co. v. Harlan (Civil Appeals, Tex.), 117 S. W. pp. 1012-12.*

"A Judgment obtained in violation of procedural due process is not entitled to full faith and credit when sued upon in another Jurisdiction, Due Process requires that no other Jurisdiction shall give effect, even as a matter of comity, to a Judgment elsewhere acquired without due process." See *Griffin v. Griffin, U. S. Sup. Ct., 90 L. Ed. 635, 327 U. S. 220.*

"In tort action upon unliquidated claim, Court is without power to enter default Judgment fixing amount of recovery without first hearing evidence; Judgment on pleadings in action on unliquidated claim and for exemplary damages without first hearing evidence is void." *Tippins v. Turben, Okla. Sup. Ct., 19 p. 605.*

"A Court to have jurisdiction to render a Judgment must have Jurisdiction of person and subject matter, and must have power to render the particular Judgment, otherwise all proceedings and the Judgment are void." *Texas Criminal Appeals, 187 S. W. (2d) 660, Reed v. State.*

The power of Court to act in a particular way is therefore an element of jurisdiction, and when a judgment of one state is relied on in the courts of a sister State, this is always a proper and necessary inquiry, as said by the following authorities:

"It is well settled that mere recitals of Jurisdiction are not conclusive, and that a Judgment of a sister state may be impeached for want of Jurisdiction, notwithstanding its recitals." *31 Am. Jur., p. 164.*

"A Judgment of a sister state is always open to impeachment on the ground of a want of Jurisdiction." *34 C. J., p. 1168.*

"Jurisdiction in a particular case is not only the power of the Court to hear and determine, but also the power to render the particular Judgment entered, and every act of the Court beyond its Jurisdiction is void." *Words and Phrases, Vol. 23, p. 380,* and cases cited.

The petitioner in this case, by his conduct in the method of securing the Kansas Judgment and remaining silent thereafter for a period of nearly two years, until filing the suit in Texas, thereby perpetrated a fraud upon respondent, which he now asks this Court to uphold; to sustain the petitioner's contentions in this case, would be putting the stamp of approval upon a rank injustice, and turn our courts into instruments of oppression, bound by no rules, and giving no protection or relief to citizens who have been injured because of an abuse of judicial power. The Due Process clause of the Constitution makes no exceptions, and court and judges are bound by their oaths to uphold and enforce said Due Process clause. Must a citizen of Texas, sued in a distant state, far from his home, move to the Court where the suit is filed, and there keep a constant and continuous watch to see that no action is taken against him without his knowledge? Doesn't he have the right to rely on the Court to follow the law and take no action without proper notice, and to enter no judgments except in the manner prescribed by law? The Kansas Court entered a default judgment when there was no default, a

mere withdrawal of an attorney from a suit not creating a default.

We respectfully submit that the Kansas Judgment is void, that the Circuit Court correctly so held, and pray that its judgment be in all things affirmed.

Respectfully submitted,

ROLAND BOYD,
McKinney, Texas,
Attorney for Respondent.